

31 March 2019

**Attention:**

Veena Krishna MNZPI  
Principal Specialist Planner – Central Resources Consents  
Auckland City Council (ACC)  
35 Graham Street, Level 1  
AUCKLAND  
**CC:** James Hassall, Mark White

Dear Veena

**Regarding 75 Sarsfield Street, Herne Bay,  
Certificate of Compliance (COC) for Boatshed on Sentinel Beach**

We write to stress our continued dismay and deep concern at the repeated attempts by the Duke family to seek consent for the demonstrably 'illegal' boatshed on Sentinel Beach.

It is a patent nonsense for the family to apply for a COC for a building that no longer lawfully exists and it is time for them to cease wasting Council's time and accept they have erred on the law and there is no legal remedy. Furthermore, Auckland Council planners must now put a stop to this illegal structure (and proposed use), have it removed and Sentinel beach returned to people of Auckland.

With respect to the current application for a Certificate of Compliance, Herne Bay Residents Association argue that the process being proposed to seek consents in two stages 1) seek a COC for the boatshed structure and 2) apply for a resource consent for its use as a helipad is severely flawed.

The process is flawed because the facts, as supplied by the applicant are contestable and a more appropriate approach would be to seek a declaration from the Environment Court to determine whether the boatshed has any existing use rights and if so, to what extent. The opportunity to raise this issue with the court exists and determining existing rights is pivotal to the (any) application.

We believe too, that Counsel for the Duke family and supporting consultants B & A Urban & Environmental are being deliberately misleading in suggesting that Auckland Council can avoid seeking a declaration as to the question of the boatshed's existing use rights. For these reasons as well as those that follow, HBRAI says Council should not allow the Duke COC application to proceed.

In relation to the issue of existing use rights, HBRAI has already clearly spelt out the legal issues in a letter dated 8 March 2019 where is said:

1. *“Contrary to Counsel for Duke’s strategy, it is suggested that the two parts of the existing use rights law – the activity (use) and structure cannot logically be separated*
2. *Further, the ‘abandonment’ of the boatshed’s original activity as a result of the complete removal of the boat ramp from the sea bed is fatal and a defect that cannot be remedied*
3. *The total reconstruction of the original boatshed structure right down to the removal and rebuilding of the piles is again fatal and unable to be legally remedied.*

*To assist Council in determining the best way forward, we direct you to two cases in point, Dunstan Versus Dunedin CC CO71/07, and Hinsen Versus Queenstown Lakes DC (2004) NZRMA 115 (ENVC). We draw your attention to section 10 subsections (2) and (4) which make it clear that the facts are against the applicant because the statutory provisions cannot be complied with.*

*All the evidence clearly means that Council cannot contemplate issuing a Certificate of Compliance and there is now no way in which the applicant can remedy the defects. Council should also appreciate that the High Court’s direction to e.g. reconsider the land use and Coastal permit applications does not in any way predetermine the outcome of any such application”.*

In view of the above, the B & A Urban & Environmental Report’ evaluation of existing use rights is incorrect as it has failed to have regard to the fact that the Duke family has ‘abandoned’ all the rights. Furthermore, the reconstruction of the building means that it can no longer perform the function for which it was originally permitted, e.g. it can no longer store and retrieve a large vessel.

In closing, we draw attention to the HBRAI letter dated 25 March which highlights another of our association’s concerns about the B & A Urban & Environmental Report which we believe is unprofessional and in parts deliberately misleading, especially in the presentation of the boatshed. See attached photo of the current reconstructed boatshed as evidence.

*“Notwithstanding our previous letters regarding the buildings on Sentinel Beach it is very interesting to see on the first page of the COC application, a fictitious image of the building showing a ramp that does not exist and doors that also do not exist. It would appear that these aspects of the building have been photo shopped in. The presence of site workers in the photo also adds to the impression.*

*It should also be noted that the photo shopped boat slipway is completely different to the one that existed prior to it being abandoned and removed from the seabed”.*

Thank you. Please do not hesitate to contact us should any aspects of our letter require clarification or you have additional queries. We look forward to an early resolution to this issue which has become of considerable concern to our members and Herne Bay residents. In the end, we believe the use and landing of helicopters in residential areas is inappropriate and totally unacceptable.

Kind regards

Dirk Hudig (Co-Chair HBRAI)

Don Mathieson (Co-Chair HBRAI)